LIBRARIES AND THE 21ST CENTURY: WHAT FORMS OF INFORMATION DISTRIBUTION WILL SURVIVE?

GladysAnn Wells
With Assistance from
Melissa Moore

Biographical Information

Program Title: Libraries and the 21st Century: What Forms of Information Distribution will Survive?

Name: GladysAnn Wells
Position or Title: State Librarian, Director
Firm or Place of Business: Arizona State Library, Archives and Public Records
Address: 1700 W. Washington
Phone: (602)542-4035
E-Mail: gawells@lib.az.us

Table of Contents

We live in a time of tremendous technological and demographic change. Libraries help us adapt to our changing world. They are a source of information on different cultures and religions, different times and places. For example, many people have recently sought information on Islam to help them understand the tensions and historical context of our world today. Libraries are also a source of economic development information for our knowledge-based society and for small businesses or others seeking success (see appendix). In Arizona, people looking for information to write a resume, start a new business, or to nurture their small business, turn to the Economic Development Information Centers (EDIC) in libraries. EDIC libraries have helped people obtain patents, test the potential of markets through demographic information, and helped small businesses find suppliers. Many libraries have legal collections and most state or university libraries have extensive law libraries that serve members of the public as well as all of you. People who need access to the Internet, or basic computer instruction, come to their community library. And, children begin reading with their parents, go on to story hours, through Internet exploration, college or employment searches and through career skill set changes and elder care information--all at their local library. We are the only public institution that provides life-long service that changes as individuals change.

The role of libraries in the digital age, rather than being usurped as many predicted, has been expanded. Libraries provide content through digital collections and perform editorial functions--insuring the information gathered is authoritative, accurate, and authentic. We work with all aspects of the digital divide--the haves and the have nots, the can and the can nots, and the will and the will nots--providing not just access and assistance, but training and mediation (helping patrons find the right information). It is not enough to have a computer or connectivity--you have to know how to use it, and want to use it, to be successful in on-

line research. Public policy, including legislation attempting to protect our economic and security interests in the digital world, has evoked profound disagreement between publishers, some technology corporations and the education community. The resulting discussions have left some fearing that libraries may be unable to provide services necessary to economic growth and life-long learning. Some proposed "downstream" database legislation would replace footnotes with royalty checks--creating even more of a have not population.

I will be giving you some background on the fundamental principles behind library services, discussing the impact of recent public policy issues on libraries, and offering some potential methods which I hope will help to move beyond rhetoric. I am going to be covering a lot of ground and if you remember nothing else, I want you to walk away understanding these three points:

- Libraries build communities.
- User expectations and content producers requested restrictions on market conditions are on a collision course in the digital environment.\
- Information has a life cycle that must be nurtured and respected.

A colleague from the museum profession recently pointed out to me that the majority of non-librarians go happily through life checking out library books and doing research without thinking about the fundamental public principles (such as copyright protection and fair use of copyrighted materials) that enable those activities. It is important that you understand those principles in order to perceive the potential impact of current public policy issues on libraries. Our society is poised to make ethical choices that will change the way we learn and work--it is critical that we all participate.

Fundamental Principles

Libraries are the heart of a community. They are the only public meeting space open to all without institutional barriers of authority, cost, age, or other restrictions. They provide a safe physical place for the community to exchange ideas; serving as the information commons of the 21st century. Libraries have always been places where everyone in a community can find common ground.

Libraries provide no-cost access for the public to all types of information in a variety of formats and media. They are the institution most concerned with providing a level playing field for all to participate. Libraries invest their resources for you to have access to information. That includes not only making the material physically or electronically available, but also providing services that make the available material meaningful. These services include basic computer instruction, literacy classes, and reference services, or mediation, to help people identify the most useful material in an avalanche of information. The need to provide internet access and these related services is a growing portion of the traditional library role of providing access to the information that people need to live fulfilling and productive lives--or to participate as informed voters in the governance of our nation. **"**The library is central to our free society. It is a critical element in the free exchange of information at the heart of our democracy."[1]

Libraries provide opportunities and tools for life-long learning. Public libraries serve as the research library for the University of Life. In today's economic culture, continuously learning new skill sets is a prerequisite for economic viability and is frequently not possible within the traditional educational system. Twenty-first century learners are self-directed and actively pursue new knowledge on an individual basis. Their community libraries serve as both a

[1] Vartan Gregorian, Smart voting starts @ your library. (Chicago: American Library Association, 2000), p. 5.

source of materials and as a resource to help them identify the materials and services that best meet their needs. As Beverly Sheppard, Deputy Director of Museum Services at the Institute for Museum and Library Services, has pointed out:

> [We are living] in a time of increased emphasis on the ability to manipulate and manage our age through the application of thought and information. Such a society must become a learning society in which all people share in the opportunities to increase skills, knowledge, understanding, and the capacity to reflect on and adapt to change. Learning across a lifetime, supported throughout our communities, is increasingly essential to a healthy and productive society.[2]

Much of the education and research and development activities which fuel our economy and define our culture are possible because of the legal doctrines of fair use and first sale, and the research assumption of permanence of information through the public domain. Fair use means being able to refer to earlier research, to build on it, and in turn to provide new information for others to build on and use. First sale allows libraries to share materials between institutions (inter-library loan) and to allow you to borrow material to use and return for others to use. These concepts are discussed in detail further in the text.

With this background in mind, let us move on to consider the public policy issues surrounding the emerging collision of Internet fostered expectation of access to ubiquitous content for public use and the need for fair profit or appropriate return on investment for the content producers, providers, and distributors, such as authors and publishers.

---

[2] Beverly Sheppard, "The Twenty-first Century Learner," www.imls.gov (Washington, D.C.: Institute for Museum and Library Services, 2000), p.2.

Copyright

Libraries believe that fair use is essential for the learning enterprise. Fair use is a lawful use of copyrighted material without prior permission from the copyright holder. It means that, for example, a student can photocopy a journal article for research without checking with the publisher first and could refer to that article in a subsequent paper with a footnote. At the same time, licensors of digital works worry about the vulnerability of these technology-based products to unlawful multiple use, and therefore loss of distribution control resulting in a reduced profit. The US Constitution Clause 8 states that Congress shall have power "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Our patent and copyright laws are based on that clause. Congressional authority was intended to be constrained by the concept of originality; the purpose of promoting science and the useful arts; and to operate within limited periods of time. Historically, copyrighted works have been sold and the purchaser received a right of use over a particular physical copy of that work, while the creator retained the copyright, or the rights to the intellectual property. The owner of a physical copy is free to sell, loan, or discard that copy. In the digital environment, the created work is licensed not purchased. The licensee of a copy might not be free to transfer, or share that copy if the license prohibits such actions.

Librarians are concerned that current legislative activity seeking to foster the market place for digital information may result in limiting activities legally a part of the promotion of research (science and the useful arts). I believe we should be very careful with the balance between the marketplace and traditional access to research activities. Activities such as fair use, and first sale under gird our

educational and research and development efforts. Section 107 of the Copyright Act[3] provides that "the fair use of a copyrighted work, including such use by reproduction in copies….for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." The "first sale" doctrine, embodied in Section 109 of the Copyright Act, limits the copyright holder's "distribution right" by providing that once the owner authorizes the release of lawfully made copies of a work, those copies may in turn be passed along to others by sale, rental, loan, gift, or other transfer. It is this provision that allows libraries to lend books without infringing the copyright.

Digital Millennium Copyright Act

The Digital Millennium Copyright Act[4] of 1998 (DMCA) legally implemented United States treaty obligations under the World Intellectual Property Organization actions seeking to facilitate worldwide electronic commerce, communication, research development and education. Congress deemed the language of the US Copyright Act, previously updated in 1976, insufficient for information activities in the digital age.

The enactment of the DMCA began what must remain an ongoing evaluation of the tension between creators and users of information in the technologically changing information environment. Currently, the library community believes that fundamental rights of fair use and first sale have not received adequate consideration. The seeming inability of the library community to convince the US Copyright Office of the potential negative impact of certain provisions of the DMCA on public research may have long lasting and problematic repercussions. At the most basic level, the

[3] 17 U.S.C.A. 107
[4] Public Law 105-304

contention is that the DMCA and licensing practices may deny lawful library research support activities such as interlibrary loan, the creation of preservation copies, off-site accessibility, long-term availability of works and the use of digital information donated or gifted to the library. There is a fundamental lack of agreement whether or not such activities are lawful under the current Section 109 language (with its lack of specificity) or whether "digital first sale" language should be adopted. At the moment, case law may become the arbitrator in this debate.

For the most recent report of the US Copyright Office on the DMCA, see http://www.loc.gov/copyright/reports/studies/dmca/dmca_executive.html. Among sections of particular concern are those quoted below--excerpted from the Executive Summary of the Digital Millennium Copyright Act Section 104 Report.

> Section 109(a) and the First Sale Doctrine
> The common law roots of the first sale doctrine allowed the owner of a particular copy of a work to dispose of that copy. This judicial doctrine was grounded in the common-law principle that restraints on the alienation of tangible property are to be avoided in the absence of clear congressional intent to abrogate this principle. This doctrine appears in section 109 of the Copyright Act of 1976. Section 109(a) specified that this notwithstanding a copyright owner's exclusive distribution right under section 106 the owner of a particular copy or phonorecord that was lawfully made under title 17 is entitled to sell or further dispose of the possession of that copy or phonorecord.
>
> Section 117 Computer Program Exemptions
> Section 117 of the Copyright Act of 1976 was enacted in the Computer Software Copyright Amendments of 1980 in response to the

recommendations of the National Commission on New Technological Uses of copyrighted Works' (CONTU). Section 117 permits the owner of a copy of a computer program to make an additional copy of the program for purely archival purposes if all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful, or where the making of such a copy is an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner.

Views Concerning Other Miscellaneous Issues ….There were concerns raised about the potential adverse effects of sections 1201 and 1202 [of the DMCA] on the traditional concepts of first sale, fair use, and the archival and preservation exemptions. It was argued that these prohibitions are likely to diminish, if not eliminate, otherwise lawful uses. It was asserted that copyright management information may also have the capacity to reveal user information in a manner that would chill legitimate uses of copyrighted works.

Another prevalent concern was that licenses are being used increasingly by copyright owners to undermine the first sale doctrine and restrict other user privileges under the copyright law. These commenters argued that this trend is displacing the uniformity of federal copyright law with a wide variation of contract terms that must be evaluated and interpreted. This poses a particular challenge to large institutions, such as universities and libraries, in determining legal and acceptable use in any given work. A number of commenters argued that federal copyright law should preempt such license terms.

> Other commenters argued that Congress did not intend copyright law broadly to preempt contract provisions. They argue that the freedom to contract serves the interests - on both copyright owners and the public by allowing greater flexibility in determining pricing, terms and conditions of use, and other options.

Finally, the debate must continue….

> Recommendations Concerning Digital First Sale Doctrine
> ….We are in the early stages of electronic commerce. We hope and expect that the marketplace will respond to the various concerns of customers in the library community. However, these issues may require further consideration at some point in the future. Libraries serve a vital function in society, and we will continue to work with the library and publishing communities on ways to ensure the continuation of library functions that are critical to our national interest.

The inadvertent pitting of creators of information against users and the champions of users, of information is a sad chapter in our national research agenda. I have included additional information sources in the appendix.

Uniform Computer Information Transaction Act

In many states the discussion surrounding the Uniform Computer Information Transactions Act (UCITA) proposed by the National Conference of Commissioners on Uniform State Law (NCCUSL) engages both sides on these issues. (See appendix for additional information.) It is important to note that non-negotiated licenses are the particular focus of UCITA--not the millions of contracts for

online information that libraries and others negotiate with a wide variety of vendors. UCITA recognizes that non-negotiated contracts (shrink-wrap and click on licenses) are a reality and seeks to codify these transactions. UCITA offers some benefits and protections in the areas of non-negotiated licenses, but librarians insist that the importance of fair use should be stressed by inclusion directly into the language of the law itself rather than being merely mentioned in the NCCUSL written comments. Libraries, I believe, are correct to champion fair use as a fundamental public policy that should preempt non-negotiated contract language. Under current UCITA language, a library accused of violating fair use of a computer information product because a click-on or shrink wrap license prohibited such legally permissible use, must first prove that in the particular example in question, the fundamental public policy of fair use outweighs the fundamental public policy of right to contract. AND, if successful in convincing a court that this is the case, the library must go on to prove that its actions fell within the legal provisions of fair use. Libraries believe that fair use is a right, not a privilege and is carefully crafted in the law to protect copyright owners. (See the appendix for testimony and suggested language changes for UCITA.) Four factors must be considered for actions to constitute fair use:

1) purpose and character of the use of the copyrighted work,
2) nature of the copyrighted work,
3) amount and substantiality used in comparison to the work as a whole, and
4) effect on the potential market for or value of the work.

Publishers and producers of copyrighted works often believe that fair use is only a defense to misuse or infringement and therefore should be a privilege to be exercised under certain conditions or for particular reimbursements…in other words pay per use--as if one were to pay for each episode watched on a cable television channel.

I believe that fair use is essential in the learning and research and product development enterprises. We must build on earlier works and theories. Past research and product development must be the basis for the future or progress is impossible. Later in this presentation I offer some options to restore the historic and essential balance between information creators and information users which I hope may be of interest.

USA Patriot Act, EO13233, Removal of Previously Accessible Government Information

In addition to issues of first sale and fair use, access to digital information is threatened by other current actions. In the born digital world it is easy to remove information from public access**,** as well as to trace who has used what information. Both have a chilling effect on research and product development. In the aftermath of September 11th, with a heightened concern about the threat of further terrorist attacks, the federal government quickly attempted to increase national security. Congress passed the USA Patriot Act[5] to strengthen our federal information-gathering network. The Patriot Act widens the scope of information federal law enforcement officials can legally access, as well as widening their means of access. For libraries, whose user information has had the same level of confidentiality protection as educational and medical records, the Patriot Act violates the libraries fundamental value of protecting user privacy. As Deborah Hurley, Director of the Harvard Information Infrastructure Project, has said there is a basic tension between the human need to communicate and the need to be safe in our communication by being able to choose who we communicate with and who has access to that

[5] Public Law 107-56

communication.[6] Providing a safe place for the community to exchange ideas is one of the fundamental principles of the library, and is threatened by this new legislation that allows federal investigators to access the content of email on library computers as well as tracking what sites a user visited or what books and materials they used. (See the American Library Association website listed in Appendix 4 for a detailed discussion.)

Executive Order 13233, the Further Implementation of Presidential Records Act, extends the power of the current and previous President, and Vice President, to restrict public access to archived presidential records. This executive order has been criticized by the American Historical Association, the Society of American Archivists, and all of the major library associations for unnecessarily limiting access to publicly owned documents and for seemingly contradicting the intent of the Presidential Records Act.[7] Steve Hensen, President of the Society of American Archivists, argues that the order "abrogate[s] the core principles of the [Presidential Records] act and violates its spirit and letter**."**[8] (See appendix 4 for additional information.)

And finally, a number of federal agencies responded to September 11th by withdrawing previously accessible information from the public. Some have removed information from their websites, while others have requested through the Government Printing Office (GPO), that information held by Federal Depository libraries be pulled from public access, or destroyed or items on web sites indicated by GPO access tools are no longer available. The GPO has traditionally requested that information be returned or destroyed for inaccuracies, but since 9/11 information on waterways, nuclear sites, and other potential targets have

---

[6] Deborah Hurley, "Gatekeepers of the Internet: Balancing Access and Control in a Networked World," Presentation at the American Library Association, New Orleans, 2000.

[7] Washington Post, December 16, 2000

[8] Steve Hensen, http://www.archivists.org/statements/prespapers.html

been removed from access through a variety of ways peculiar to the digital environment. While there may be information there that is useful to potential terrorists, the information being removed from public access also has many legitimate public uses. This is problematic for the future; there are no records of information withdrawn and we cannot identify now or later--what we can no longer access.

Life Cycle of Information

For every information resource that a library handles--whether book, periodical, video, or electronic product, there is a life cycle that our educational, political, social, and economic communities takes for granted. When information is created, or born, it is eligible for the full legal protection of our copyright laws to provide a fair profit to its creator, producer, or distributor. Historically, in the print environment, as that information piece aged, it went through phases of discounted market value, public use, and finally entered the public domain. That life cycle--information matures, is used, and enters the public domain--is critical to research and the production of a new generation of information. The preservation of information, whether in hard bound book or digitally born document, is the final step, and carries a significant cost to the preserving institution. There may need to be a repurposing of intellectual property guidelines and laws governing use of information for learning in the digital environment to ensure that we continue to have access to a full, robust life cycle. In the digital environment, information is first at risk because the market place does not plan well for long term capitalization or investment--especially in the absence of current profit. Secondly, the digital medium is inherently fragile, unlike paper.

As libraries and information users seek to translate fair use and first sale principles into the digital information environment and ensure the right to share for research, they

may have to learn new ways to coexist with fair profit. Similarly, creators and distributors of digital information may have to consider alternative business practices to coexist with fair use. I believe that the initial access to information may need to be circumscribed, but that information in the digital world must age into the public domain to protect our capacity for new economic opportunities, product development, and reinvestment through use and research. Currently, we lose many digitally born documents when their creators decide they lack sufficient further market value. At this time, libraries often cannot obtain the legal or the technical means to make even one preservation copy. Therefore, in the digital environment, short-term profitability determines the longevity of born digital information that our children might need. Without a preservation copy the information will not exist.

There are at least two challenges to be met. First, the information must acquire permanence--perhaps independent of the electronic environment, perhaps within it--that ensures that it has a chance for a robust long-term existence, and that it exists long enough to pass into the public domain. That permanence must not be constrained by market factors since it is impossible to predict what information will lead to research break-throughs or new products in the future. Second, there should be no cost access to the public domain irrespective of format--at least through libraries.

Recognition and exploration of concepts including current practices, other cost models and issues of long term custody or stewardship could raise the level of debate as we work towards reconciliation between fair use and fair profit. Currently libraries respect and track fair use, pay in advance through higher initial licensing costs for multiple use, and reimburse for use beyond legal fair use guidelines. We are accustomed to keeping track of what we use or share and how we use and share it. We are accustomed to honoring the rights of copyright holders to a fair profit to insure available capital to invest in future information. As institutions,

libraries may pay more up front to make information available to multiple users and the doctrine of first sale allows us to share and lend those materials. We are also accustomed to reimbursing copyright holders when our need for a particular work exceeds the guidelines for fair use--for example, the reprinting of an entire article. Rather than disrupt the fabric of how research has been accomplished and new products developed in this country, perhaps other cost models such as hard back vs. paperback, cable television, or permanence in exchange for multiple use might safeguard both fair use and fair profit. If we need to read a best seller when it is first published, we pay more for the hardbound copy; if we can wait, we buy the paperback.[9] Libraries often buy the hardbound to ensure multiple use...there may be a digital correlation. We pay more during the first months of access to information with the understanding that a limited number of uses are "fair." Later, the same information may become less expensive. Or, as in cable TV, we purchase a subscription for our "family" use and perhaps we could define our particular service community (our town, campus, and other libraries) as our family entitled to use that subscription. We also purchase a subscription for "channels" of information--not for each episode shown/available on each channel. Cable TV could not be viable in the marketplace if each household had to pay per view as in hotel movies. Neither can the research and development community pay for every item of information. Fair use must co-exist with fair profit. Our knowledge-based economy demands no less.

In order to meet the needs of life-long learning or economic competitiveness, we must have access to information in a manner that fosters new research, new product development and new entrepreneurial opportunities. That is only possible if there is public access to research information AND if research is allowed to age into the public

[9] Jim O'Donnell, "Gatekeepers of the Internet: Balancing Access and Control in a Networked World," Presentation at the American Library Association, New Orleans, 2000.

domain and remains permanently available. If the promises of the Internet and the world wide web are to be realized, and the expectations of ubiquitous access to content, or the option of an information commons are to remain available to all through the public domain in the digital world, we must design caretakers, stewards, custodians whose business it is to make sure that digital material transcends immediate payback and is available for public use and research. It would seem to me that libraries could and should be enabled to fulfill that critical mission. The market place cannot survive in the absence of immediate need or profit, but the operations our educational, political and economic systems are predicated on public access to information in perpetuity. Our challenge is to preserve information for the unknown times it will be needed and will be useful. Perhaps a commercial/not for profit partnership might be explored...libraries agree to be long term custodians for public domain information in exchange for reduced first access, prime time reduced rates.

Conclusion

The library's value as a physical community meeting space and source of life-long learning has increased as the virtual world has grown and non-commercial public spaces have diminished. While the library's role of providing access to information has remained fundamental to the democratic values of our society, it has become more complex and may be threatened by public policy issues currently under debate.

Those three points really boil down to one--That there is something valuable at risk-the life cycle of information--and you may have an opportunity to choose to do something about it. Can you be part of the solution--finding the legal balance between fair use and fair profit?

Appendix 1: Arizona Economic Development Information Centers

Coping with bewildering amount of information places a burden on all of us - especially on small business. We all need a place where we can get help to make sense of all that's out there. Business information constantly changes and updates are crucial to economic viability itself. Where does one go to locate up-to-date business information? It may be as close as your local library.

Libraries have always been places of opportunity, self-help and lifelong learning where we can find information we need for our business, health, school, jobs and family. And with today's library technology, libraries are reaching beyond their walls to connect to the larger global community: Pittsburgh reaches Paris, Tucson touches Tokyo, Boise accesses Beijing! Today's library brings information from around the world in just a few clicks and affords us opportunities unparalleled in history.

Librarians are the "ultimate search engine." Librarians are experts in the ever-changing information environment. They are friendly, trained professionals who help people find what they are looking for - no matter what the subject - in books, archives and online.

Because of the commitment of the Arizona State Library, Archives and Public Records to keep Arizona's businesses informed and up-to-date on financial and business matters, the Arizona State Library worked with federal grant funds to initiate 27 public and community college library Economic Development Information Centers (EDIC). These Centers provide the community business and library users:

- Business information from a core collection of business reference materials
- A staff person familiar with business resources, the local economy and community

- Referrals for business information and assistance
- Database searching, and
- Internet access - assistance and training

Local public and community college libraries had not always been in touch with the business community. With the infusion of federal money to jump-start this program, thousands of Arizonans benefited from the EDIC Libraries throughout Arizona. High school students writing business reports, college graduates writing résumés, first time business entrepreneurs, small and large business owners, and government officials could now all find business materials in their local EDIC library.

Rural communities, in particular, benefit from the business resources available at some of the most remote localities in Arizona. Instead of having to drive hundreds of miles to do business research, business clients can locate materials at the touch of the EDIC library's computer keyboard or book stacks. EDIC Libraries have specific local, state, national and international business information as well as the latest information on, for example, the North American Free Trade Agreement (NAFTA) reports and notices. A trained library staff member is there for assistance and help.

EDIC libraries are now partnering with the Department of Commerce, local Small Business Development Centers at Community Colleges, the Chambers of Commerce and other local business enterprises to provide local, statewide, national and international business resources. The Arizona State Library, Archives and Public Records has recently prepared a statewide pilot project providing EDIC libraries with a commercial business database that is available for EDIC library clients to access. Business profiles, the *Wall Street Journal* in full text back to 1984, current research and development in industries, marketing trends and prominent local business contacts are among the information included in this package. This database is the "gold standard for business information."

Business needs of individuals and businesses are now being better served with the EDIC libraries in the metropolitan Phoenix area (Phoenix, Mesa, Tempe, Apache Junction, Chandler, Avondale, Peoria, Scottsdale), Globe, Clifton, Thatcher, Holbrook, Flagstaff, Mohave County, Yuma, Prescott, Tucson, Casa Grande, Florence, Nogales and Sierra Vista. Stop by one of these libraries and have a tour of the facilities! By using the resources at the EDIC libraries, you may get that terrific job you have always wanted by using the résumé resources, or become a successful entrepreneur because of research that led to a solid business plan successfully submitted to a financial institution. Your future may be waiting for you in the local EDIC library!

For more information contact: Linda McCleary, Arizona State Library, Archives and Public Records, Library Development Division in state at (1-800) 255-5841 or (602) 542-5841.

Appendix 2: The 21st Century Learner

The 21st Century Learner
by Beverly Sheppard
Acting Director Institute of Museum and Library Services
Reprinted with permission from the Institute for Museum and Library Services

"Access to knowledge is the superb, the supreme act of truly great civilizations."
Toni Morrison

A Learning Society

The profound changes of the 21st century are transforming America into what must become a learning society. We enter this century in the midst of a bewildering mix of opportunity, uncertainty, challenge and change, all moving at unprecedented speed. Fueled by dazzling new technologies, increasing social diversity and divide, and radical shifts in industry and labor markets, accelerating change has become a way of life. To navigate the changes, minimize the risks and participate in shaping a new order, all Americans need access to learning throughout their lifetimes.

Never before have museums, libraries and the whole of the non-formal sector of educational institutions faced such challenges and opportunities. As the marketplace moves to exploit the commercial opportunities of new information technologies, the nation's vital public needs for education and lifelong learning can easily be ignored. The demand is great for fresh and innovative thinking to construct a bold, new learning network. Such a network must empower all citizens to participate. Access to learning across a lifetime may become among the essential civil rights of the 21st century.

The breadth of change in American society is extraordinary. At its core is the pervasive and growing role of

information and communication technologies, accompanied by dramatic restructuring of the workplace and the labor market. Change is occurring in family and community life as well, as many of the traditional underpinnings of both are shifting or falling away. The pluralism and diversity of our population challenges our sense of identity and warns of new divisions as social and economic differences widen the gaps between us. At every turn a new focus on choice and individuality energizes some of us and erodes confidence and security for many others.

This period has already been titled many ways: *the information age, the knowledge age, the age of risk*. Alan Greenspan has further called today's America "*an economy of ideas*." Each title defines a time of increased emphasis on the ability to manipulate and manage our age through the application of thought and information. Such a society must become a learning society in which all people share in the opportunities to increase skills, knowledge, understanding, and the capacity to reflect on and adapt to change. Learning across a lifetime, supported throughout our communities, is increasingly essential to a healthy and productive society.

America must also be more than an *information society*. Information itself is raw material.What is most vital is knowing how to use information effectively to transform our world into one that is productive and supportive both to individuals and to the common good.We must become a *nation of learners*-individuals, families and communities engaged in learning in our schools and colleges, libraries, museums, archives, workplaces, places of worship and our own living rooms. Our experiences may be real or virtual, hands-on or on-line, as we engage with resources found throughout our communities or available through television, radio, the Internet or the integrated technologies of tomorrow.

Five state libraries-Washington, Oregon, New Hampshire, Illinois and New Mexico-have recently

enacted a Government Information Locator Service (GILS), providing residents easy and useful access to government information in their states. Whether they are seeking information about a driver's license, pesticide use, or adoption, residents can quickly find the appropriate government services. The project has developed standards for interoperability, ease of language and innovative use of technology. Through this program, the library is the enabler of good citizenship.

Through a museum and library collaborative program in Montana, eight tribes of Plains Indians are discovering more of their own heritage as the project builds a database of 1500 tribal images from the past, a resource never before available to both scholars and the general public.The collection, available through the Internet, augments the oral histories of the tribes with new information. Working together, the Montana State University and the Museum of the Rockies, are sharing and expanding their work through workshops with tribal college librarians.

To achieve such vision, the core educational institutions across this country must assert aggressive and responsive leadership now to match the speed of technology with their will to make a difference.

Museums and libraries may be among the most vital of our nation's resources to address this challenge. Their collections and expertise are well known and trusted. They are part of America's landscape in communities of all sizes. They address all ages, reach out to all members of our society and have skillfully honed community partnership into a kind of art form. They are well prepared to meet the self-directed learner of the 21st century and to inspire the desire to learn

among those less well prepared. As stewards of the artifacts of history, culture, science and the natural world, they are ready to serve as primary educators in a changing world. Their most pressing challenge may be to help conceive a new means to provide access to their resources and awareness of their roles in a learning society.

> **At the Lower East Side Tenement Museum new immigrants learn English through the letters and diaries of immigrants of an earlier century. They discover that their feelings of confusion and loss were shared by others long ago. They feel less lonely and are buoyed by the triumphs and progress of those who came before them.**
>
> **In upstate New York, a "self-help" job-finding system, centered in rural public libraries, brings important information and guidance to residents seeking employment. The Rural Access to Job Information program is a creative partnership, developed by the Pioneer Library System, that forges links between forty-two public libraries and the New York State Labor Department. It is enabling countless residents to polish their resumes, gain useful job-seeking advice and find out about employment opportunities.**

Learning in a New Age

There is great imperative to creating a learning society. Today's businesses rely on innovation and creative application of new technologies. The most valued employees are those who continue to learn, who are able to think for themselves, apply problem-solving skills and adapt rapidly. High-quality learning supports good citizenship, as well, developing informed and thoughtful citizens who are renewing and revitalizing our communities. Leisure and learning also go hand-in-hand, as Americans seek to learn

more about their place in a changing world.

The shift to a new economy radically changes many things, including how we are provided the opportunity to learn. A true learning society should provide widespread, integrated, systematic, and equitable access to learning resources and skills. Everyone should know how and where to find information. All should be able to participate in learning activities and to gain the confidence that fosters and sustains healthy individuals and communities. Such a system is more possible today than ever before if the informal learning institutions across our country find new ways to extend their reach and build a network of their assets.

Lifelong learning goes across all ages, providing opportunities in both formal and informal settings. It should equip one to understand issues, learn new skills, exercise choice and make important personal judgements. It should teach critical thinking skills that allow individuals to take greater responsibility for their own personal growth. It should be within the reach of everyone. Such opportunities may reflect the definition written by Jacques Delors, on behalf of UNESCO:

Learning should be based on four "pillars": learning to live together; learning to know; learning to do and learning to be.[1]

The learning age requires a daring new vision. The responsibility for learning is not the exclusive preserve of formal educational institutions and training centers; it is a community-wide responsibility. Lifelong learning must be a continuum that complements the formal, K-12 educational structure with ongoing opportunities in informal settings. It should reflect new understandings of brain development and educational psychology, studies that emphasize the social nature of learning and the need for personal, intrinsic motivation. It should be flexible, efficient, readily available and embedded in daily life.

"Our libraries, archives, historical societies, cultural institutions, schools and universities are the DNA of our civilization."
Vartan Gregorian

Museums and Libraries: At the Center of Lifelong Learning

Museums and libraries are at the heart of such a bold vision for lifelong learning. Museums and libraries are richly endowed learning resources, built within the fabric of our communities. Their collections form the bedrock of learning in every discipline from art to science, from history to the natural world. A report from the National Museum Directors Conference of the United Kingdom called that nation's cultural sector "…our country's second education sector," [2]-a quote equally applicable to the vast numbers of museums and libraries serving communities across the United States.

Museums and libraries have historically provided the kinds of learning experiences that are at the core of informal learning:

- They are trusted, engaging and stimulating resources for families and communities.
- They exemplify the highest standards of stewardship for the collections and ideas in their care.
- They offer authentic, first-hand encounters with the objects and information they collect.
- They customize learning experiences of high quality to meet the needs of many different audiences, from amateurs to experts.
- They offer superb scholarship, finely honed teaching expertise and tested strategies for working in their communities.
- They teach the skills of information literacy, enabling users and visitors to discern quality and think critically.

Museums and libraries are well positioned to meet

the demands of lifetime learning. Throughout their history, both institutions have been deeply engaged in the critical work of creating and serving learners. They have rich histories as partners with schools and universities. Museum and school partnerships have incorporated learning standards and curriculum basics, building strong complementary programming.

School and university libraries have stood at the center of learning campuses, providing a dazzling breadth of resources and the capacity to link learners well beyond the campus limits.

Museum and library programs include far more than content alone. Librarians are essential knowledge navigators, developing search tools that enable users to seek information in constructive, logical paths. Museums, likewise, accompany objects and artifacts of known authenticity with respected scholarship. They present objects layered with information and encourage examination, analysis and questioning. Museums and libraries are experts at cutting through the overwhelming glut of information that characterizes our age and teaching the skills of visual learning and critical thinking-the skills that develop lifetime learners.

Museums and libraries invite purposeful use and forge links to the world beyond their walls. In all that they do, they are working toward the need for social inclusion. Free and equitable access to information is the hallmark of the library experience and stands as a core principle of a democratic society. Through service and access, libraries meet the needs of a changing society. Libraries reach out to every age, setting expectations for learning across a lifetime. A single library may present new parents with an infant's first book, provide story times for toddlers, run homework centers for students, develop teen centers and mentoring programs and take carts full of books to nursing care facilities.

The Queens Borough Public Library (New York) serves the most diverse county in the United States. Its collections and programs address the needs of residents who speak as many as 120 different languages. The library not only builds book collections in different languages, it also runs the second largest English-as-a-second-language program in the United States, helping newcomers become an active part of their new community.

At the Museum of American History of the Smithsonian Institution, a powerful exhibit, *From Field to Factory*, portrays the migration of African Americans to the cities of the North following the Civil War. Not only does it tell of that powerful movement in American history, but it also resonates with all people who have undergone the agony of displacement and dislocation.

In a pluralistic society both libraries and museums facilitate comfort with cultural diversity. Exhibits and programming tell the stories of once forgotten Americans, bringing to light the histories of minorities and various ethnic groups. New research into the histories of women, children, laborers and the common man fuels learning experiences of all kinds. Such learning enables cross-cultural understanding, encouraging visitors to validate their own identities and find commonalities with others. Museum collections can celebrate the richness of a community, capturing the drama of an individual story and connecting it to the universality of the human experience.

Museums and libraries are already creating rich places for learning, both real and virtual. Both are embracing the use of new technologies to reach beyond their walls, breaking through barriers of geography, time, economy and physical disability. They are building digital libraries of teaching and learning materials, using technology to invite

discovery, activity and the creation of new learning communities. Their programs invite exchange between the institutional experts and the knowledge of the public, adding to content, innovation and meaningful exchange.

The sampling of programs highlighted throughout this text illustrates how effectively museums and libraries are currently addressing the needs of a learning society through such activities as:

- Providing access to essential life skills.
- Celebrating diversity through new collections and programs.
- Building bridges to formal educational institutions.
- Expanding K-12 education into the after school hours.
- Forming partnerships that meet community needs.

Toward a New Vision

The power and reach of museums and libraries to address all topics and all ages is indisputable. It may be that no other institutions have more resources to support learning across a lifetime. But, it is increasingly clear that museums and libraries can not succeed alone. The bold vision for the future must be a new kind of network, an infrastructure or system of complementary resources, tools and connections that serve the varied paths of today's learners.

A free choice learning infrastructure must have the ability to reach and engage diverse audiences and support a multiplicity of learning styles. Lifelong learning is by nature learner-centered, personalized, inquiry-driven and activity-based. An infrastructure to support such needs must include broad and varied content, a commitment to physical and intellectual access and a delivery system that can support urban, suburban and rural needs.

In partnership, museums, libraries and others can create a flexible learning ecosystem, a community campus of resources for all. They can address the learning divide that threatens our society and explore ways to provide the skills, resources, tools and learning dispositions that all learners

need.

In his commencement address to the Class of 2000 at Howard University, William E. Kennard, Chairman of the Federal Communications Commission, warned students that "…ensuring that all Americans have access to technology is the civil rights challenge of this millennium. We will not meet this challenge until all of our children are as interested in becoming Michael Dell as they are in becoming Michael Jordan-when they would rather have the latest laptops than the latest hightops."

Access to technology is the one part of an equitable learning society. The desire to acquire information, the skill to find it and the ability to use it well are also essential. Museums and libraries work toward all of these goals. Libraries are not only the #1 point of access for those who do not have Internet use at home or at work, they are also teachers of information seeking skills. Museums encourage discovery. Through the power of objects, they help visitors link their worlds to those of other times and places. Through both content and context,museums teach visual thinking skills, using tangible objects to help visitors understand and respect the diversity of their worlds.

> **A widespread collaboration in Colorado is creating a digital library of information about the state, its history, people and places-a resource that will eventually be accessible to all. The project is collecting digital images from the scientific, cultural and historical collections of Colorado's museums, libraries, archives and historical societies. Bringing them together in a central, virtual collection will lead to new understandings about many aspects of the state's unique character.**

The Institute of Museum and Library Services believes it is time to galvanize the resources of museums and

libraries, in partnership with other stakeholders in lifelong learning, to construct new and more dynamic frameworks for learning, creating infrastructures that bring content and delivery systems together in fresh combinations. Old boundaries will have to be erased and new collaborations spawned. Our communities are filled with potential partners: public radio and television, community service organizations, the faith community, community colleges and universities-all of whom offer both allied and complementary assets to museums and libraries. We believe we can best extend the learning process through innovative collaboration.

Partnerships will need to be organic and authentic, based on deeply rooted, shared missions, transforming projects into processes. Collaborative strategies may be built around the central idea of access, developing a confederation of educational institutions that support the concept of community as a learning campus. Such a model will be primarily concerned not with what is learned but with how learning takes place and is supported through an innovative approach to infrastructure.

The impact of technology on this transition is profound. By erasing the boundaries between institutions, technology offers unprecedented access to information and unlimited potential for combining resources and the ideas inherent in them.

> **Wisconsin Public Television and the Wisconsin State Historical Society are joining forces to form the Wisconsin Collections, an on-going and comprehensive magazine-style television series to explore the state's rich history. Partnering the vast archival resources of the historical society with the technical expertise of the Wisconsin Public Television will bring meaningful stories into both homes and classrooms. Opportunities for enhanced technologies, combining television and Internet services, will increase the use of in-**

depth historical information.

Well-used, technology could truly unlock the power of collections, creating broad public access and facilitating a fresh spirit of inquiry. As television goes digital, for example, the computer and the television set are becoming compatible and interchangeable.

In its recent publication, *Connecting Communities*, the Benton Foundation asks:

> *"How can they [new technologies] best be used to promote education, democracy, public health and hundreds of other interests that are our daily concerns? How can they be harnessed by teachers, librarians, museum directors, doctors, farmers, care-givers, welfare officers, workforce trainers, home learners, public safety officials, minority groups and volunteer associations?"* [3]

The Benton Foundation study illustrates how many institutions, committed to public service, are addressing such awesome challenges through the building of technology-based alliances. These collaborations use technology to reach outside their walls and into homes, classrooms and the workplace. The new world of broadband communications offers extraordinary opportunities for the integration of computers, television, radio, satellites, telephone and wireless communications in the service of learning. Imagine such opportunities at the heart of a confederation of learning institutions!

Like museums and libraries, the public service telecommunications sector is examining the challenge of the future and the role for partnership. Public broadcasting is driven by a service mission that parallels that of museums and libraries and is similarly seeking new partnerships in a digital age. In defining the challenges currently faced by public service telecommunications, the Century Fund and the Carnegie Corporation have signaled the need for a broadened

public alliance. They reference the exclusion of many of our country's key cultural institutions, libraries and archives within the television age and caution that these public service institutions" …cannot afford to be left behind in the digital and Internet age." [4]

Addressing similar concerns, the Institute of Information Policy of Pennsylvania State University and Penn State Public Broadcasting have formed Partners in Public Service to explore the changing roles of public broadcasting in a digital age. Central to their agenda for a national conference is the development of a powerful new dialogue between public broadcasting, museums and libraries.

A Call to Action

With so much at stake, the Institute of Museum and Library Services invites you to join the conversation about museums, libraries and the 21st century learner. IMLS initiated the conversation with a Washington-based roundtable in March 1999. Since then, IMLS staff has conducted a series of open forums at professional meetings across the country. We have initiated discussions with other providers of lifelong learning opportunities and have engaged private and public funders in consideration of building funding and programmatic partnerships.

> **In Connecticut, a comprehensive project called Connecticut Classroom will draw from significant museum and library collections to document the state's history. The collection of graphic images and historical information is being designed to enrich classroom curriculum. The project is placing emphasis on teacher preparation, working with teachers across the state to learn how to make meaningful use of the materials with their students.**

The Association of Youth Museums is taking the first steps to build partnerships that amplify the voices of children in American society. Their partners in social and civic services are discussing how to build on the respected experiences of youth museums to connect to vital issues facing children and families. Many youth museums run exemplary programs, such as the parenting library within the Houston Children's Museum where adults can add to their parenting skills while their children play in the adjacent Tot Spot.

In the fall of 2001, IMLS will host a national conference on the roles of museums and libraries in a learning society. We expect to encourage a wide geographical representation and invite participation from teams of museums, libraries and other partners who have already begun exploring collaborative ideas. We are encouraging a tone of experimentation, a laboratory-like approach to enabling museums and libraries to play leading roles in the building of a learning society.We are working toward securing funding for a follow-up set of demonstration projects that will test innovative models for collaboration.

We invite you to join the conversation about these very important issues and responsibilities by responding to the ideas put forth in this position paper. Please consider such questions as:

- How do you define a learning community?
- What is the capacity of museums and libraries to address lifelong learning needs?
- Who are the other players in meeting these needs?
- What models for collaboration are already out there?
- What might an informal learning infrastructure look like?
- How might technology be employed to serve new collaborations?
- How can we assure inclusion in a new learning society?
- Who else should consider these questions?

IMLS invites you to share your thoughts in any appropriate format-from a written response to an email message. Direct email to bsheppard@imls.gov.We will use our website http://www.imls.gov and other publications to share ideas and continue this very vital consideration of one of the most provocative challenges to museums and libraries in the 21st century.

Beverly Sheppard

Notes

1 Jacques Delors, et al. *Learning: The Treasure Within*, Report to UNESCO of the International Commission on Education for the Twenty-First Century, 1996.

2 National Museum Directors Conference. New Museums and the Learning Age, 1999.

3 Richard Somerset-Ward. *Connecting Communities: Public Media in the Digital Age*. The Benton Foundation, 2000.

4 Case Statement, *Fulfilling the Promise of Public Service Telecommunications in the Digital and Internet Age*. The Century Fund, 1999.

Beverly Sheppard

Beverly Sheppard was appointed Acting Director of the Institute of Museum and Library Services on March 25, 1999. She has been with the Institute since June 1998 when she was named the first Deputy Director of IMLS with responsibility for the Office of Museum Services. Ms. Sheppard has more than 16 years of professional museum experience and is known for her work in museum education. Ms. Sheppard is the author of several publications, including the highly acclaimed *Building Museum and School Partnerships*, a text that is widely used in museum education and teacher training programs. Prior to joining IMLS, Ms.

Sheppard held the position of Associate Director of the Chester County Historical Society in West Chester, Pennsylvania.

Ms. Sheppard has extensive experience in museum professional organizations. She served two terms as President of the Pennsylvania Federation of Museums and Historical Organizations, working closely with the Governor and Pennsylvania State Legislature to establish state policies and to increase budget support of museums. Under her leadership the Federation spearheaded successful partnerships among museum leadership, Pennsylvania Departments of Education and Tourism and other state agencies.

She earned a Bachelor of Arts in Art and English from Bucknell University and a Master of Arts in Studio Art from Marywood College. Ms. Sheppard formerly taught art and art history on the faculties of the University of Scranton and Marywood University.

The Institute of Museum and Library Services

The Institute of Museum and Library Services is an independent Federal agency that fosters leadership, innovation and a lifetime of learning by supporting the nation's museums and libraries. Created by the Museum and Library Services Act of 1996, P.L. 104-208, IMLS administers the Library Services and Technology Act and the Museum Services Act. IMLS has an annual budget of approximately $190 million. There are 122,000 libraries and 10,000 museum sites in the United States and its Territories. IMLS receives policy advice from two Presidentially appointed and Senate-confirmed entities: the National Commission on Libraries and Information Science and the National Museum Services Board. For more information contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, N.W.,Washington, DC, 20506, (202) 606-8536, or visit **www.imls.gov.**

Appendix 3: Testimony before Arizona House Energy, Utilities and Technology Committee on UCITA

February 28, 2001

Thank you, Chairman Hatch-Miller. For the record, my name is GladysAnn Wells. I am your state librarian. I ask you to think of what I am talking about today in a much larger context because I am responsible in this state, at least, and to you for activities that cover the waterfront of archival records, governmental research, and library and information science. That is the context that I come to you today.

And I also wanted to mention that I have been in the information profession three times longer than NCCUSL debated UCITA. So, forgive me if my commitment and passions echo that time frame.

I appreciate, Chairman Hatch-Miller, all you have done to keep us all at the table. I hope it's a model for the country.

Fair Use is the term that we use in our conferences, in our discussions, and in our workshops to involve all those activities of the educational learning life cycle of information that are: sharing of information, lending of information between institutions, classroom support use of information, and research building on previous research on content and preservation.

Fair use goes back over 200 years. It traces origination in this country back to the US Constitution, Article I, Section 8, Clause 8 which is protected under the Copyright Act. Specifically due to congressional action on fair use, you have certain criteria that you have to meet that involves the purpose and character for work that you are using, the nature of that copyrighted work, the amount that you are using from it. It is not fair game to copy the whole book. You can copy a section of it for your research and give

reference -- not the whole item. And most importantly, I think for our discussions today, the effect that your use of that content has on the potential market value for that content.

Copyright has historically sought a balance between those who produce content and those who use it, and has tried to protect the full exchange of ideas and future research… at the same time recognizing how important it is to protect intellectual property.

Copyright principles are media neutral. Since the inception of the digital environment, we have the Digital Millennium Copyright Act, which is not specifically mentioned in UCITA and quite frankly, it is part of the federal fabric that the kinds of activities that I am concerned about today. It is obviously by congressional admission, not perfect, because they made provisions for two year rule making and then a three year rule making review after that.

The Library of Congress has recognized that it was perhaps in the first rule making to narrow and I quote, "places considerable burdens on the scholarly, academic, and library community." It has called for a review of both the timetable of that rule making and the criteria.

You have already heard today that UCITA is concerned with commercial contract law and not copyright law. And I quote from the NCCUSL Comments:

"There remains a fundamental public interest in assuring that information in the public domain is free for all to use from the public domain and in providing access to information for public purposes such as education, research, and fair comment."

The Comments go on to say:
"Fair use doctrine is established by Congress…to the extent that Congress has established policies on fair use, those can be taken into consideration."

My problem and the problem with UCITA and the learning life cycle activities which involve using the content information to build on and to teach with and to do product

development with…the problem is that under the default of UCITA, in the non-negotiated mass market (click on or shrink wrap licenses), a license can prohibit lawful (fair use) access to that information.

And the research community and the educational community has to not only prove that their use is a fair use under federal copyright law and Digital Millennium Copyright Act, and that in that case, fair use is a fundamental public policy and that that fundamental public policy in that case outweighs the fundamental public policy right to contract.

With all due respect to Mr. Bush and to Holly and with gratitude for all of their patience in teaching me, to this information critter, when I had to do one set of processes before and now I have to do that set of processes and this set of processes…that ain't harmless and that ain't neutral. And that is the point Holly and I got to when we had our oops moment. It is the one thing we could not work through. And that is the issue I bring to you today.

Mr. Hatch-Miller said, "don't not talk about problems, talk about solutions." And so, I go back to the NCCUSL comments to provide what I believe is the possible solution. And I quote: "Fundamental state policies are most commonly stated by the legislature."

I believe that as this [legislation] moves back and forth across the country, there will be people like me standing before your colleagues in each and every state. They may be more eloquent, they may be more erudite, but they will not be more earnest in their plea for special consideration to protect the very fundamental concept of fair use that goes beyond our educational environment to our whole society.

We must be able to build on previous research. We must be able to quote and use previous contents and previous information. We must be able to build in the fair use environment, irrespective of format.

Quoting from a CD ROM or a video stream clip

presentation for a classroom, is just as important in the new environment as it was as in the 18th century and the 17th century to quote from books. That is fundamental to the kind of work our country needs to do. The kinds of solutions I see are the kinds that I have mentioned.

There could an exemption for libraries saying, "Take libraries out of UCITA." And I supplied Mr. Hatch-Miller's folks with language to that effect. I personally think it would be a mistake, because I think Holly is quite correct and I differ from some of my colleagues in that I believe there are some very important protections in UCITA, and I would hate to see the learning community taken away from those protections.

Provide an exclusion for our activities, but as soon as you start to list activities what happens to some of the activities you forgot to list? I have real concern for that, but I have also provided language that has been developed by other states in their discussion of UCITA for an exclusion.

I would prefer that our legislature and others reaffirm what I call the learning life cycle of information, and I call it this at the cost of some teasing I might add. And what I mean is that at the very beginning, in the inception of information, it can be classified. It can be a trade secret. It can be very strictly guarded. But, as it moves through its growth pattern, it eventually moves through a series of diminishing restrictions until it becomes public domain. That entire life cycle has to be protected or we cannot develop the products for tomorrow. We cannot do the work of today.

I think it could be possible to clarify the uses that are permitted under state and federal law. I think we could remove UCITA from the equation and say. "for these kinds of activities, UCITA doesn't apply."

I have given three specific examples of new language, because Mr. Hatch-Miller said, "Come up with something different." And, with a lot of help from Holly, a lot of work from Jonathon Band, who is assisting the American Library Association, the Association of Research Libraries, I did that.

And the language suggestion basically tries to do what I am talking about, which says, "In Arizona, it is a fundamental public policy of the highest order to allow people to do research and to engage in educational activity."

I think it would be up to policy makers in every state to determine whether or not the underpinnings of the educational environment and our product development research are protected as a privilege and/or a right.

I think that fair use must co-exist with fair profit. I think both are necessary. And I think that education, research, and product development are every bit as important to the new economy or any economy as is commerce or the products themselves.

I ask you to affirm fair use, to allow the educational and information structure of this state and this country to continue to educate our children and our grandchildren, to prepare the new products and to do the new research that will determine our competitive edge in the years to come.

Thank you.

GladysAnn Wells, State Librarian

Suggested Language for UCITA 105, Az 44-7205

1) (b) If a term of a contract violates fundamental public policy, the court may refuse to enforce the contract, enforce the remainder of the contract without the impermissable term, or limit the application of the impermissable term so as to avoid a result contrary to public policy, in each case to the extent that the interest in enforcement is clearly outweighed by a public policy against enforcement of the term. (new) This chapter does not alter, diminish or enhance the effect of the fundamental public policies of the United States, including any regarding nonprofit libraries and educational institutions lawful use of information.

2) (b) If a term of a contract violates a fundamental public policy, (new)including any fundamental public policy governing the lawful dissemination of knowledge to the public by nonprofit library and educational institutions (return to UCITA), the court may refuse to enforce the contract, enforce the remainder of the contract without the impermissable term, or limit the application of the impermissable term so as to avoid a result contrary to public policy against enforcement of the term.

3) Add to the end of the new language "If a term of a contract violates the United States' policy governing the lawful dissemination of knowledge to the public by nonprofit libraries and educational institutions, a court shall limit the application of the term so as to avoid a result contrary to this public policy to the extent that such dissemination does not violate any other law."

Appendix 4: Select Bibliography for Further Reading

For information on libraries and economic development:

Arizona State Library, Archives and Public Records, Library Development Division website on EDIC
http://www.lib.az.us/extension/pressrel.htm

Charles R. McClure and John Carlo Bertot, *Public Library Use in Pennsylvania: Identifying Uses, Benefits, and Impacts,* (Harrisburg, PA: Pennsylvania Dept. of Education, 1998).

University of Kansas Policy Research Institute, *The Role of Public Libraries in Local Economic Development*, Report No. 260 (Lawrence, KS: Kansas State Library, 2000).

Charles R. McClure, Jane Robbins, and Bruce T. Fraser, *Economic Benefits and Impacts From Public Libraries in the State of Florida*, (Tallahassee, FL: Florida State University, 1999).

For further reading on the 21st Century Learner:

Institute for Museum and Library Services website
http://www.imls.gov/whatsnew/21cl/21cldisc.htm

For information on the Digital Millennium Copyright Act:

Library of Congress website address of DMCA Section 104 report
http://www.loc.gov/copyright/reports/studies/dmca/dmca_study.html

American Library Association Washington Office website
http://ala.org/washoff/

For information on the Uniform Computer Information Transactions Act:

National Conference of Commissioners on Uniform State Law website (UCITA)
http://www.nccusl.org

Americans for Fair Electronic Commerce Transactions website (UCITA)
http://www.4cite.org

American Library Association Washington Office website
http://ala.org/washoff/

For information on the USA Patriot Act and Executive Order 13233:

Society of American Archivists website
http://www.archivists.org

American Library Association Washington Office website
http://ala.org/washoff/